

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 785**

---

**Introduced by Assembly Member Mendoza**

February 17, 2011

---

*An act to amend Section 1091.5 of, and to add Section 1091.7 to, the Government Code, relating to public officers. An act to add Section 87100.2 to the Government Code, relating to the Political Reform Act.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 785, as amended, Mendoza. ~~Public Political Reform Act of 1974:~~ *public officers: contracts: financial interest.*

~~(1) Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in a contract, as specified, made by them in their official capacity or by any body or board of which they are members, subject to specified exceptions.~~

~~This bill would provide, notwithstanding any other provision of law, that a public officer who is an elected member of any state or local body, board, or commission shall be deemed to have a financial interest in a contract pursuant to these provisions, if that officer's spouse, or child, parent, or sibling, or the spouse of the child, parent, or sibling, has a financial interest in any contract made by that public officer in his or her official capacity, or by any body, board, or commission of which that public officer is a member.~~

~~(2) Existing law provides for a criminal penalty on every officer or person prohibited by state laws from making or being interested in contracts, who willfully violates any of the provisions of those laws.~~

~~By creating a new crime pursuant to these provisions, this bill would impose a state-mandated local program.~~

*(1) The Political Reform Act of 1974 prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. A violation of the Political Reform Act of 1974 is subject to administrative, civil, and criminal penalties.*

*This bill would provide, for purposes of this prohibition, that a public official who is an elected or appointed member of any state or local body, board, or commission has a financial interest in a decision if an immediate family member of the public official has a financial interest in the decision, and would include a person lobbying on behalf of a party that has an order of business before the body, board, or commission to be an agent of that party. This bill would define “immediate family member” to include public official’s spouse or domestic partner, children, parents, siblings, and the spouse or domestic partner of a child, parent, or sibling.*

*This bill would impose a state-mandated local program by exposing these public officials to potential criminal penalties for failing to recuse themselves from participation where required by this bill.*

~~(3)~~

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*(3) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a <sup>2</sup>/<sub>3</sub> vote of each house and compliance with specified procedural requirements.*

*This bill would declare that it furthers the purposes of the act.*

*Vote: ~~majority~~ <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.*

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 87100.2 is added to the Government Code,*  
2     *to read:*

1     87100.2. (a) A public official who is an elected or appointed  
2 member of any state or local body, board, or commission has a  
3 financial interest in a decision within the meaning of Section 87100  
4 if an immediate family member of the public official has a financial  
5 interest in the decision.

6     (b) For purposes of determining a financial interest pursuant  
7 to this section, a person lobbying on behalf of a party that has an  
8 order of business before the body, board, or commission shall be  
9 construed to be an agent of that party, and, as the lobbyist, have  
10 a financial interest in that order of business.

11     (c) For purposes of this section, "immediate family member"  
12 includes a spouse or domestic partner, children, parents, siblings,  
13 and the spouse or domestic partner of a child, parent, or sibling.

14     SEC. 2. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.

23     SEC. 3. The Legislature finds and declares that this bill furthers  
24 the purposes of the Political Reform Act of 1974 within the meaning  
25 of subdivision (a) of Section 81012 of the Government Code.

26     ~~SECTION 1. Section 1091.5 of the Government Code is~~  
27 ~~amended to read:~~

28     ~~1091.5. (a) An officer or employee shall not be deemed to be~~  
29 ~~interested in a contract if his or her interest is any of the following:~~

30     ~~(1) The ownership of less than 3 percent of the shares of a~~  
31 ~~corporation for profit, provided that the total annual income to him~~  
32 ~~or her from dividends, including the value of stock dividends, from~~  
33 ~~the corporation does not exceed 5 percent of his or her total annual~~  
34 ~~income, and any other payments made to him or her by the~~  
35 ~~corporation do not exceed 5 percent of his or her total annual~~  
36 ~~income.~~

37     ~~(2) That of an officer in being reimbursed for his or her actual~~  
38 ~~and necessary expenses incurred in the performance of official~~  
39 ~~duties.~~

1     ~~(3) That of a recipient of public services generally provided by~~  
2     ~~the public body or board of which he or she is a member, on the~~  
3     ~~same terms and conditions as if he or she were not a member of~~  
4     ~~the body or board.~~

5     ~~(4) That of a landlord or tenant of the contracting party if the~~  
6     ~~contracting party is the federal government or any federal~~  
7     ~~department or agency, this state or an adjoining state, any~~  
8     ~~department or agency of this state or an adjoining state, any county~~  
9     ~~or city of this state or an adjoining state, or any public corporation~~  
10    ~~or special, judicial, or other public district of this state or an~~  
11    ~~adjoining state unless the subject matter of the contract is the~~  
12    ~~property in which the officer or employee has the interest as~~  
13    ~~landlord or tenant in which event his or her interest shall be deemed~~  
14    ~~a remote interest within the meaning of, and subject to, the~~  
15    ~~provisions of Section 1091.~~

16    ~~(5) That of a tenant in a public housing authority created~~  
17    ~~pursuant to Part 2 (commencing with Section 34200) of Division~~  
18    ~~24 of the Health and Safety Code in which he or she serves as a~~  
19    ~~member of the board of commissioners of the authority or of a~~  
20    ~~community development commission created pursuant to Part 1.7~~  
21    ~~(commencing with Section 34100) of Division 24 of the Health~~  
22    ~~and Safety Code.~~

23    ~~(6) Except as provided in Section 1091.7, that of a spouse of an~~  
24    ~~officer or employee of a public agency in his or her spouse's~~  
25    ~~employment or officeholding if his or her spouse's employment~~  
26    ~~or officeholding has existed for at least one year prior to his or her~~  
27    ~~election or appointment.~~

28    ~~(7) That of a nonsalaried member of a nonprofit corporation;~~  
29    ~~provided that this interest is disclosed to the body or board at the~~  
30    ~~time of the first consideration of the contract, and provided further~~  
31    ~~that this interest is noted in its official records.~~

32    ~~(8) That of a nonecompensated officer of a nonprofit, tax-exempt~~  
33    ~~corporation, which, as one of its primary purposes, supports the~~  
34    ~~functions of the body or board or to which the body or board has~~  
35    ~~a legal obligation to give particular consideration, and provided~~  
36    ~~further that this interest is noted in its official records.~~

37    ~~For purposes of this paragraph, an officer is "nonecompensated"~~  
38    ~~even though he or she receives reimbursement from the nonprofit,~~  
39    ~~tax-exempt corporation for necessary travel and other actual~~  
40    ~~expenses incurred in performing the duties of his or her office.~~

1     (9) ~~That of a person receiving salary, per diem, or reimbursement~~  
2 ~~for expenses from a government entity, unless the contract directly~~  
3 ~~involves the department of the government entity that employs the~~  
4 ~~officer or employee, provided that the interest is disclosed to the~~  
5 ~~body or board at the time of consideration of the contract, and~~  
6 ~~provided further that the interest is noted in its official record.~~

7     (10) ~~That of an attorney of the contracting party or that of an~~  
8 ~~owner, officer, employee, or agent of a firm which renders, or has~~  
9 ~~rendered, service to the contracting party in the capacity of~~  
10 ~~stockbroker, insurance agent, insurance broker, real estate agent,~~  
11 ~~or real estate broker, if these individuals have not received and~~  
12 ~~will not receive remuneration, consideration, or a commission as~~  
13 ~~a result of the contract and if these individuals have an ownership~~  
14 ~~interest of less than 10 percent in the law practice or firm, stock~~  
15 ~~brokerage firm, insurance firm, or real estate firm.~~

16     (11) ~~Except as provided in subdivision (b), that of an officer or~~  
17 ~~employee of, or a person having less than a 10-percent ownership~~  
18 ~~interest in, a bank, bank holding company, or savings and loan~~  
19 ~~association with which a party to the contract has a relationship~~  
20 ~~of borrower, depositor, debtor, or creditor.~~

21     (12) ~~That of (A) a bona fide nonprofit, tax-exempt corporation~~  
22 ~~having among its primary purposes the conservation, preservation,~~  
23 ~~or restoration of park and natural lands or historical resources for~~  
24 ~~public benefit, which corporation enters into an agreement with a~~  
25 ~~public agency to provide services related to park and natural lands~~  
26 ~~or historical resources and which services are found by the public~~  
27 ~~agency, prior to entering into the agreement or as part of the~~  
28 ~~agreement, to be necessary to the public interest to plan for,~~  
29 ~~acquire, protect, conserve, improve, or restore park and natural~~  
30 ~~lands or historical resources for public purposes and (B) any officer,~~  
31 ~~director, or employee acting pursuant to the agreement on behalf~~  
32 ~~of the nonprofit corporation. For purposes of this paragraph,~~  
33 ~~“agreement” includes contracts and grants, and “park,” “natural~~  
34 ~~lands,” and “historical resources” shall have the meanings set forth~~  
35 ~~in subdivisions (d), (g), and (i) of Section 5902 of the Public~~  
36 ~~Resources Code. Services to be provided to the public agency may~~  
37 ~~include those studies and related services, acquisitions of property~~  
38 ~~and property interests, and any activities related to those studies~~  
39 ~~and acquisitions necessary for the conservation, preservation,~~

1 improvement, or restoration of park and natural lands or historical  
2 resources.

3 ~~(13) That of an officer, employee, or member of the Board of~~  
4 ~~Directors of the California Housing Finance Agency with respect~~  
5 ~~to a loan product or programs if the officer, employee, or member~~  
6 ~~participated in the planning, discussions, development, or approval~~  
7 ~~of the loan product or program and both of the following two~~  
8 ~~conditions exist:~~

9 ~~(A) The loan product or program is or may be originated by any~~  
10 ~~lender approved by the agency.~~

11 ~~(B) The loan product or program is generally available to~~  
12 ~~qualifying borrowers on terms and conditions that are substantially~~  
13 ~~the same for all qualifying borrowers at the time the loan is made.~~

14 ~~(b) An officer or employee shall not be deemed to be interested~~  
15 ~~in a contract made pursuant to competitive bidding under a~~  
16 ~~procedure established by law if his or her sole interest is that of~~  
17 ~~an officer, director, or employee of a bank or savings and loan~~  
18 ~~association with which a party to the contract has the relationship~~  
19 ~~of borrower or depositor, debtor or creditor.~~

20 ~~SEC. 2.— Section 1091.7 is added to the Government Code, to~~  
21 ~~read:~~

22 ~~1091.7. (a) Notwithstanding any other provision of law, a~~  
23 ~~public officer who is an elected member of any state or local body,~~  
24 ~~board, or commission shall be deemed to have a financial interest~~  
25 ~~in a contract pursuant to this article, if that officer's spouse, or~~  
26 ~~child, parent, or sibling, or the spouse of the child, parent, or~~  
27 ~~sibling, has a financial interest in any contract made by that public~~  
28 ~~officer in his or her official capacity, or by any body, board, or~~  
29 ~~commission of which that officer is a member.~~

30 ~~(b) (1) The determination of a financial interest with respect to~~  
31 ~~any person described in this section shall be made according to~~  
32 ~~the same standards as those set forth in this article with respect to~~  
33 ~~the public officer, as applicable.~~

34 ~~(2) For purposes of determining a financial interest pursuant to~~  
35 ~~this section, an individual lobbying on behalf of a contracting party~~  
36 ~~shall be construed to be an agent of that contracting party.~~

37 ~~SEC. 3.— No reimbursement is required by this act pursuant to~~  
38 ~~Section 6 of Article XIII B of the California Constitution because~~  
39 ~~the only costs that may be incurred by a local agency or school~~  
40 ~~district will be incurred because this act creates a new crime or~~

1 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
2 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
3 ~~the Government Code, or changes the definition of a crime within~~  
4 ~~the meaning of Section 6 of Article XIII B of the California~~  
5 ~~Constitution.~~

O